

REMARKS

I. Status of the Claims

Claims 22-97 were pending prior to the Office Action dated April 1, 2003. Claims 79, 95 and 96 stand rejected for alleged Obviousness-Type Double-Patenting over U.S. Patent 6,143,290 (“the ‘290 patent”). Claims 22-31, 36, 37, 39-48, 53, 54, 56-68, 73, 74, 76-86, 91, 92, and 94-97 stand rejected for alleged Obviousness-Type Double-Patenting over U.S. Serial No. 08/459,713 (“the ‘713 application”). The specific grounds for rejection, and applicants’ response, thereto, are set out in detail below.

II. Obviousness-Type Double-Patenting

Claims 79, 95 and 96 stand rejected for alleged Obviousness-Type Double-Patenting over the ‘290 patent. Applicants traverse, but in the interest of advancing the prosecution, a terminal disclaimer will be filed once all other grounds of rejection are overcome.

III. Provisional Obviousness-Type Double-Patenting

Claims 22-31, 36, 37, 39-48, 53, 54, 56-68, 73, 74, 76-86, 91, 92, and 94-97 stand rejected for alleged Obviousness-Type Double-Patenting over claims 9-13, 24-63, 65, 66, 68, 69 and 71-74 of the ‘713 application. Applicants traverse.

Claims 22-31, 36, 37 and 39-41 of the instant application recite “regional administration” of a vector. The term “regional administration” is not found in the claims of the ‘713 application. Thus, regardless of the fact that “the instant claims fall entirely within the scope of the claims of the ‘713 application,” there is nothing on the record to indicate that regional administration is obvious over the claims of the ‘713 application. Reconsideration and withdrawal of the rejection is therefore respectfully requested.

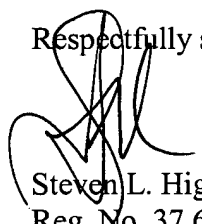
Claims 42-48, 53, 54, 56-58 recite intravenous administration of Ad-p53 to treat human cancer. Claims 59-68, 73, 74, 76-78 recite intratracheal administration of Ad-p53 to treat human cancer. Claims 79-86, 91, 92 and 94-97 recite direct injection of a tumor with Ad-p53 to treat human cancer. Applicants note that all but claims 38-41 are distinct from the foregoing routes of administration. However, in light of concerns regarding "same invention" double-patenting over these claims, applicants are amending claims independent claims 42, 59 and 79 to incorporate the limitations of claims 49, 69 and 87, respectively, which have not been rejected for obviousness-type double-patenting. Reconsideration and withdrawal of the rejections is therefore respectfully requested.

IV. Conclusion

Applicants believe that the foregoing remarks fully respond to all outstanding matters for this application. Applicants respectfully request that the rejections of all claims be withdrawn so they may pass to issuance.

Should the Examiner desire to sustain any of the rejections discussed in relation to this Response, the courtesy of a telephonic conference between the Examiner, the Examiner's supervisor, and the undersigned attorney is respectfully requested.

Respectfully submitted,



Steven L. Highlander
Reg. No. 37,642
Attorney for Applicants

FULBRIGHT & JAWORSKI L.L.P.
600 Congress Avenue, Suite 2400
Austin, Texas 78701
(512) 474-5201
(512) 536-4598 (facsimile)
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